THE HON'BLE MRS. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE MR. JUSTICE L. NARASIMHA REDDY

Rev.W.A.M.P.No.2009 of 2005 in W.A.No.122 of 2005

Dated 28-10-2005

Between:

Commandant,

Hyderabad

…Review Petitioner

A n d

A. Seshaiah, Hyderabad.

…Respondent

THE HON'BLE MRS. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE MR. JUSTICE L. NARASIMHA REDDY

Rev.W.A.M.P.No.2009 of 2005 in W.A.No.122 of 2005

ORDER: (per L. Narasimha Reddy, J.)

This review WAMP is filed by the respondent in Writ Appeal No.122 of 2005.

For the sake of convience, the parties are referred to, as arrayed in the Writ Appeal.

The appellant filed W.P.No.8127 of 2004 challenging the action of the respndent, proposing to retire the petitioner from service on invalidation, as per Rule 38 of Central Civil Services (Pension) Rules, 1972 (for short 'the Rules). The appellant, who was appointed as a Constable in the CISF, was sought to be retired, on the ground that he has become physically unfit. The writ petition was dismissed through order dated 29-12-2004. The Writ Appeal was filed against the same.

Extensive arguments were advanced on behalf of both the parties in the writ appeal. The appellant based his claim on the provisions of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act'). He pleaded that Section 47 of the said Act prohibits the respondent from retiring him from service on the grounds of disability.

In the counter affidavit filed on behalf of the respondent it was pleaded that the Government of India exempted Para-military Forces, including C.I.S.F., from the operatrion of Section 33 of the Act, which mandates that certain percentage of vacancies shall be reserved in the Government services, in favour of physically handicapped candidates. A copy of the Notification, dated
10-09-2002, exempting the said Forces from operation of Section 33 of the Act; was also filed.

While disposing of the writ appeal, the purport of Section 33 on the one hand, and Section 47, of the Act, on the other hand, were taken into acount, and on finding that the opeation of Section 47 was not exempted, in respect of such Forces, the writ appeal was allowed and necessary relief was granted.

In the review application, it is pleaded that the Government of India exempted the Para-military Forces, including C.I.S.F., from Section 47 also. A copy of the notification in S.O.995, (E), dated
10-09-2002 is filed, and it is urged that the judgment in the writ appeal deserves to be reviewed.

Sri A.Rajashekhar Reddy, Learned Assistant Solicitor-General and Sri J.M. Naidu, made submissions, on behalf of the respective parties.

The present state of affairs is attributable, suarely, to the respondent. He did not care to place the notification No.S.O.995 (E), dated 10-09-2005, before this Court, when the writ petition, or the writ appeal were disposed of. A perusal of the judgment in the writ appeal discloses that absence of notification, exempting the C.I.S.F. from Section 47 of the Act was specifically taken note of, and it made all the difference. Now, that a copy of the notification is placed before this Court; it cannot be ignored.

Accordingly, the review W.A.M.P. is allowed, and the judgment dated 28-04-2005 in Writ Appeal No.122 of 2005 is reviewed. It is held that in view of the notification in S.O.No.995 (E), dated 10-09-2002, exempting the C.I.S.F. from operation of Section 47 of the Act, the appellant is not entitled for the benefit under the Act.

Learned counsel for the appellant brought to our notice, that sub-rule (4) of Rule 38 of the Rules, which applies to the services in C.I.S.F.; mandates that where a medical authority referred to, in sub-rule (2) declares a Government servant fit for service of less meritorious character, than what he has been doing, he should be provided employment in such category. The fact that the order impugned in the writ petition was issued under Rule 38 of the said Rules; discloses that the C.I.S.F. is governed by the Rules. Therefore, even though the appellant is not entitled for the benefit of Section 47 of the Act, the respondent shall be under obligation to comply with Rule 38(2) of the Rules, in its letter and spirit, together with the clarifications and notifications, issued under it.

In view of the fact that the appellant has since been reinstated into service, we do not want to express any opinion in the matter. However, we make it clear that in case any contingency arises with regard to the physical inability of the appellant to work, the respondent shall not take any drastic action without obtaining the opinion of the Medical Board. If the Medical Board opines that the appellant is physically unfit, the respondent shall follow Rule 38 of the Rules, by granting invalidation pension, or by reverting him to the lower post, as the case may be; as provided therein.

The Review W.A.M.P. is accordingly disposed of.

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T. MEENA KUMARI, J.

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L. NARASIMHA REDDY, J.

Dt.28-10-2005.

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